

GUIDANCE FOR IMPLEMENTING THE FEDERAL HIGHWAY ADMINISTRATION (FHWA) EMERGENCY RELIEF PROGRAM USING FEDERAL EMERGENCY RELIEF FUNDS

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GENERAL INFORMATION

Federal Aid funds can be used to reimburse local municipal agencies (LA) for costs associated with emergency repairs to or reconstruction of federal-aid eligible roads, resulting from natural disasters or catastrophic failures. This funding program, known as the Federal Highway Administration (FHWA) Emergency Relief (ER) program, is described in detail in Title 23 CFR 668, and in the FHWA Emergency Relief Manual. The current version of the manual is available on the FHWA website, at www.fhwa.dot.gov/reports/erm.

ER funds are not intended to replace other Federal-aid, State, or local funds to correct non-disaster related deficiencies, for new construction to increase capacity, or to otherwise improve highway facilities.

Damage to highways must be severe, occur over a wide area, and result in unusually high expenses to the local agency. Examples of natural disasters include floods, hurricanes, earthquakes, tornadoes, tidal waves, severe storms, and landslides. A catastrophic failure is defined as the sudden and complete failure of a major element or segment of the highway system that causes a disastrous impact on transportation services. Additionally, in order to be eligible for ER, the cause of the failure must be determined to be external to the facility. Both conditions must be satisfied. A bridge suddenly collapsing after being struck by a barge is an example of a catastrophic failure from an external cause.

ER funds are not intended to cover all damage repair costs nor interim emergency repair costs that will necessarily restore the facility to pre-disaster conditions. The ER program provides for repair and restoration of highway facilities to pre-disaster conditions. Restoration **in kind** is therefore the predominate type of repair expected to be accomplished with ER funds.

Added protective features, such as the relocation or rebuilding of roadways at higher elevation or lengthening or raising bridges, and added facilities not existing prior to the natural disaster or catastrophic failure, such as additional lanes, upgraded surfacing, or structures are commonly referred to as a betterment. Betterments are not generally eligible for ER funding unless justified.

Failures due to an inherent flaw in the facility itself do not qualify for ER assistance.

Economic hardship is not a factor in determining repair eligibility.

PROJECT ELIGIBILITY

Generally, projects eligible for reimbursement in the ER program are repair projects, resulting from damage to the existing federal aid-eligible transportation infrastructure. All existing elements of the highway cross section located within the current right of way, damaged as a

direct result of the declared disaster, may be eligible for restoration or repair to pre-disaster conditions under the ER program.

ER projects are categorized as either emergency repairs or permanent repairs.

Emergency repairs are those repairs required to be completed during and immediately following a disaster to restore essential traffic, to minimize the extent of damage, to minimize or eliminate the emergency condition, or to protect the remaining facilities. The LA can complete these repairs immediately following a disaster, and prior approval from FHWA or Michigan Department of Transportation (MDOT) is not required. Properly documented costs will later be reimbursed as follows:

- if and only after the FHWA Division Administrator makes a finding that the disaster is eligible for ER funding, and
- the specific site is determined to be eligible to receive ER funds.

Permanent repairs are those repairs undertaken (usually after emergency repairs have been completed) to restore the roadway to its pre-disaster condition. The LA should not begin any work on permanent repair projects until all of the following have occurred:

- The FHWA Division Administrator determines that the disaster is eligible for ER funding.
- the specific site is determined to be eligible for funding, and
- Project eligibility and implementation tasks, described later in this document, are satisfactorily completed.

Permanent work begun before this determination is made is not eligible for ER fund reimbursement, if and when those funds become available.

ELIGIBILITY DETERMINATION

To be eligible for ER funding, the proposed work must be located on a Federal - aid route, these being public highways other than those functionally classified as local roads or rural minor collectors, as defined in 23 CFR section 101. The method used to determine eligibility of projects for participation in the FHWA ER program is outlined as follows:

- As the event develops and escalates, LA representatives maintain communication of issues related to the event with local and county emergency management coordinators and MDOT Region staff, using normal reporting procedures and methods. The local emergency management coordinators and MDOT Region staff coordinate these reports with MDOT's Safety and Security Administration (MSSA).
 - MSSA receives the various reports and maintains contact with the appropriate FHWA Emergency Coordinator.

- In order to document the scope of the emergency event, the LA prepares damage assessments and cost estimates to repair damage to the federal aid-eligible transportation infrastructure, and forwards this information to the local emergency management coordinators and MDOT Region staff.
 - MSSA receives the damage assessments and cost estimates from local agencies and MDOT Regions, and compiles those reports and estimates for possible inclusion in the determination of FHWA ER program eligibility.
- The LA may determine to proceed with undertaking repair or restoration work related to minimizing the emergency. As part of this work, the LA should keep detailed records of work completed, including labor, equipment, and material records; a description of the work completed including plans, diagrams, or sketches; and photographs if possible, showing the damage.
- Local emergency management coordinators and local officials determine whether to declare a disaster (over a widespread area) or emergency (over a localized or contained area).
- After the local declaration is made, a request is made of the Governor's office, through the Michigan State Police Emergency Management and Homeland Security Division, for the Governor to make a similar declaration.
 - Note that if certain criteria are met through the compiled the local/county declaration(s), the Governor can request a Presidential Declaration of Disaster or Emergency. If, after considering a number of factors the President makes the declaration, then Federal Emergency Management Administration (FEMA) assistance will be made available to those eligible projects. FEMA will participate in damages not under the jurisdiction of other federal agencies. FEMA funds will not cover damages on Federal-aid roads.
 - Also note that the FHWA and FEMA assistance programs are distinct and separate from each other. In order to receive funding from each program, local agencies will be expected to provide similar information to both the FHWA and FEMA programs for the separate road systems.
- Following the Governor's declaration, and upon MSSA's receipt of all the damage assessments and cost estimate, and after MSSA certifies that the aggregate cost estimates to repair the damage to the federal aid-eligible transportation infrastructure exceeds \$700,000, MSSA will follow FHWA protocol to request financial assistance from the ER program, to repair the damage.
- MSSA will provide a compiled list of damaged Federal-aid roads to the MDOT Local Agency Program (LAP) unit and the FWHA Emergency Coordinator.
- MSSA and FHWA will work together to schedule site visits and inspections with LA

Meeting participants should include LA representatives, MDOT Region or Transportation Service Center (TSC) representatives, FHWA, and LAP staff if available.

At this meeting, FEMA, FHWA, and LA will complete drafts of FHWA Detailed Damage Reports (FHWA 1547) at each site to determine:

- the scope and cost estimate of the proposed repair project
- whether the proposed project will be categorized as “emergency repair” or as “permanent repair”.
- whether certain work items, normally categorized as “permanent repair” can be constructed by the local agency as part of the “emergency repair” work.
- MSSA will remain in contact with FHWA, MDOT, and LA representatives regarding ER program activation and eligibility determinations. As part of the effort to determine site eligibility, MSSA or FHWA may request additional, more detailed information from the LA including but not limited to photos, descriptions, and itemized estimates.
- Upon determination of FHWA ER program activation by the FHWA Michigan Division Administrator, MSSA staff will notify representatives of all LA’s, and will forward copies of the eligible Detailed Damage Inspection Reports and supporting information to MDOT Local Agency Programs for implementation.

ER PROGRAM FUNDING

As stated previously, work proposed for ER funding must be located on a Federal - aid route, as defined in 23CFR section 101. The project must have defined limits and scope of work. It must be approved for eligibility by the local Rural Task Force (RTF) or Metropolitan Planning Organization (MPO), and must be programmed by MDOT Bureau of Planning. The proposed project must be included in the current, approved State Transportation Improvement Plan (STIP). The local agency must obtain all required environmental clearances prior to obligation.

It is important to note that the LA should not begin any work on potential projects that are categorized as permanent until all the steps outlined in the “PROJECT IMPLEMENTATION” section of this guidance are complete.

For emergency repairs, the Federal funding participation share is 100 percent of the approved construction cost for repair work done to restore essential traffic, to minimize the extent of damage or to protect the remaining facilities within the first 180 days after the occurrence of the disaster. For permanent repairs, the Federal funding participation share is 80 percent of the approved construction cost for eligible items, and the local agency pays the remaining costs. For

both emergency and permanent projects, the ER funds are capped at the amounts obligated for the project, as may be adjusted after award of the construction contract. Therefore all project costs that exceed the approved, obligated amount (ie construction extras and overruns) are generally not eligible for ER funding, and are the responsibility of the local agency.

PROJECT IMPLEMENTATION

MDOT Local Agency Program (LAP) staff administers ER projects similar to how all other federal aid projects are administered. After receiving notice of the possibly eligible emergency event, MDOT LAP staff will attempt to contact representatives of affected local agencies while the emergency declaration steps listed above are being completed, to review the ER program requirements, documents required to be submitted to LAP by the local agency, bidding requirements, the typical construction schedule, and schedule of fund reimbursement. FHWA and LAP may allow the local agency to complete the work using approved local letting methods, or by force account authorization.

In some emergency events, federal funds may be appropriated but may not be allocated and obligated for several years following the event, due to federal budget constraints. For this case, the local agency may need to complete the work using other funding sources, including but not limited to other federal aid (STP) funds, and be reimbursed by the ER funds when those funds become available.

Summaries of the various allowable letting methods are contained on the MDOT LAP website (www.michigan.gov, then click on the “Enhancement Projects” link on the left side of the page, then click on the appropriate link for the contract method, located in the middle of the page, under the “**Letting**” header).

For eligible, permanent projects, and regardless of the letting method, the local agency needs to prepare and forward a suitable grade inspection package to the LAP staff engineer. This package includes plans, special provisions, construction cost estimates, and program application. The staff engineer must conduct a grade inspection plan review meeting, after which the local agency forwards a completed final package, including permits, right of way certifications, and SHPO approvals, to LAP. The staff engineer will request fund obligation and, following obligation, will request completion of the cost sharing agreement between MDOT and the local agency. If the project will be bid using the MDOT letting system, the staff engineer will work with the local agency to prepare the proposal package and move the project through the MDOT system. If the project is to be locally let, the local agency will prepare a complete bid proposal package and forward it to the staff engineer for review, and the staff engineer will authorize the local agency to advertise for bids. Following adequate documentation of the local let bid process and execution of the cost sharing agreement, the staff engineer will authorize the local agency to proceed with construction.

Local agencies should not begin work on any eligible or potentially eligible permanent ER-funded project until they receive a written or electronic authorization from the MDOT staff engineer, regardless of the severity of the damage or the local perception of the status of the emergency. Federal program guidelines are very clear, in stating that all work begun before the

federal funds are obligated and authorized will result in that work being declared not eligible for federal fund participation, and may jeopardize all the federal funding associated with the project.

For projects bid and advertised through the MDOT letting system, MDOT will pay the contractor for all work completed, and will invoice the local agency for the local share of the participating costs, and for all of the non-participating costs. Contractor payments for all other projects will be paid by the local agency, who will then request reimbursement of the federal funds.

As with all federally funded projects, the local agency is responsible for maintaining the complete project construction record, including but not limited to wage rate reviews and certifications, material testing records, and inspection reports. The appropriate MDOT Delivery Engineer must review and approve all contract modifications, and complete the final project document review. For force account projects, LAP will conduct the project final inspection and report. For current information and requirements for project construction records, contact the MDOT delivery engineer at the appropriate Transportation Service Center (TSC) office.

COORDINATION OF THE FHWA ER AND FEMA FUNDING PROGRAMS

Please note that the FHWA ER and FEMA programs are separate programs, having separate requirements. In order to satisfy the requirements of both programs for the same site, the LA may be required to participate in separate site inspection or review meetings, or prepare and maintain separate files for each program, each containing identical or redundant information.